



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First-Class Mail

JAN 12 2012.

Patrick Kilbane

Milton, WI 53563

RE: MUR 6515
Patrick Kilbane

Dear Mr. Kilbane:

On August 5, 2011, Professional Fire Fighters of Wisconsin ("PFFW") notified the Commission of the possibility that PFFW, and former PFFW Executive Board officers, Tracy Aldrich, Robert Baird, Michael Drury, Richard Gale, John Gee, Troy Haase, Lance Hanson, Patrick Kilbane, Len Orlando, Ann Watzka f/k/a Ann Peggs and Michael Woodzicka, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with activity between 2002-2010.

After reviewing the submission, the Commission found reason to believe, on December 13, 2011, that PFFW and each of the above-named Executive Board Officers knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Act, and 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) of the Commission's regulations in connection with their reported 2002 to 2008 activity. The Commission also found reason to believe that PFFW and PFFW Executive Board officers Robert Baird, John Gee, and Lance Hanson violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) in connection with their reported 2009 to 2010 activity, and that Messrs. Baird, Gee and Hanson's 2009-2010 violations had been knowing and willful. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

Please note that PFFW and its former Executive Board officers have a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. You may submit a written request for relevant information gathered by the Commission in the course of its investigation of this matter. See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

1 **FACTUAL AND LEGAL ANALYSIS**

2
3 **MUR 6515**

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5 **RESPONDENT:**

Patrick Kilbane

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7 **I. INTRODUCTION**

8 This matter originated with a *sua sponte* submission made to the Federal Election
9 Commission ("the Commission") by the Professional Fire Fighters of Wisconsin ("PFFW") and
10 certain individuals who served as PFFW Executive Board officers at different points between
11 2002 and 2010 (collectively referred to as "Respondents"). For the reasons set forth below, the
12 Commission found that there was reason to believe that the Professional Fire Fighters of
13 Wisconsin Executive Board officer Patrick Kilbane knowingly and willfully violated 2 U.S.C.
14 §§ 441b(a) and 441f; and 11 C.F.R. §§ 110.4(b)(ii) and (iii) and 114.2(e) with respect to federal
15 contributions by PFFW from 2002 through 2008.

16 **II. FACTUAL SUMMARY**

17 PFFW, the statewide affiliate of the International Association of Fire Fighters ("IAFF"),
18 reimbursed eleven of its officers for \$18,263.34 in contributions to IAFF's separate segregated
19 fund, International Association of Firefighters Interested in Registration and Education PAC
20 ("FIREPAC") between 2002-2010.

21 PFFW reimbursed the FIREPAC contributions in two ways. Between 2002 and 2008,
22 with the authorization of the full Executive Board, PFFW reimbursed eleven officers for
23 \$16,888.34 in FIREPAC contributions via claims they submitted for expenses related to fictitious
24 "legislative meetings" in Madison, Wisconsin. Submission at 6-7. In 2009 and 2010, after the
25 fictitious "legislative meetings" scheme ended, without the knowledge of the full Executive

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1 Board, PFFW reimbursed three officers for \$1,375 in FIREPAC contributions via claims they
2 submitted for expenses related to conference registration fees that they never actually paid.

3 PFFW represents that it has 1) obtained repayments of all known amounts of the
4 unlawfully reimbursed contributions; 2) notified its regional caucus and local unions about the
5 improper expense payment practices; 3) notified FIREPAC of the unlawful reimbursements; and
6 4) obtained the resignations of remaining Executive Board officers who received unlawful
7 contribution reimbursements.

8 A. The 2002-2008 Reimbursements

9 PFFW is governed by an eleven officer Executive Board, all of whom are full-time
10 firefighters. The officers are elected to staggered three-year terms at annual IAFF/PFFW state
11 conventions. Submission at 3. Patrick Kilbane was a PFFW Executive Board officer from 2001
12 to 2004. During a January 2002 leadership retreat, PFFW's then existing Executive Board
13 encouraged its officers to increase their FIREPAC contributions to a level that would also allow
14 them to attend the IAFF annual conference without paying a registration fee. *Id.* When some
15 Executive Board officers expressed concern about their ability to afford larger contributions to
16 FIREPAC, the Executive Board agreed that "any officer who made such a contribution in order
17 to attend the legislative conference would be able to submit an expense statement to the PFFW
18 for two administrative days to be characterized as a 'legislative meeting' in Madison
19 [Wisconsin]." ¹ *Id.* at 6-7. PFFW states that the "legislative meeting" contrivance was adopted
20 in order to reduce, if not eliminate, the financial burden to Board members who made the larger
21 contributions to FIREPAC instead of paying the registration fee to IAFF. *Id.* at 7. During
22 similar retreats held during January or February of each successive year - with the exception of

¹ Patrick Kilbane was an Executive Board officer at the time the unlawful reimbursement scheme was created.

1 2004 when the topic was apparently not raised - PFFW designated similar "legislative meeting"
2 dates as a vehicle for the reimbursement of that year's FIREPAC contributions by Executive
3 Board officers.² *Id.* at 7.

4 PFFW asserts that the 2002 retreat was the first and last time that its Executive Board
5 discussed this repayment practice in any depth, and the practice continued until 2008, "without
6 legal review or operational analysis." Submission at 7. According to the declarations of the
7 Executive Board officers, none of them considered the legal ramifications of the reimbursement
8 program under the Act or other laws, and most, if not all, of those who participated in the 2002
9 retreat had not seen IAFF or FIREPAC materials advising not to seek reimbursement for
10 contributions in connection with attendance at the legislative conference. *Id.* at 7; *see also*
11 Declarations.

12 PFFW argues that the 2002 agreement was not the product of any pre-retreat planning by
13 any officer and there was no specific discussion about whether such practices complied with
14 applicable laws or IAFF policies. Submission at 14. Nevertheless, all of the PFFW officers
15 acknowledge that they made false claims for the reimbursement of expenses from fictitious
16 "legislative meetings" as a means to obtain reimbursement of FIREPAC contributions.

17 In 2008, Michael Woodzicka replaced Richard Gale as PFFW President. Submission at
18 7. In preparation for the 2009 retreat, Woodzicka reviewed PFFW's practices and procedures, as
19 well as IAFF legislative conference registration materials stating that contributions to FIREPAC
20 could not be reimbursed with union funds. Submission at 8; *see also* Woodzicka Declaration at
21 ¶ 13. Woodzicka stopped the practice of making reimbursements for non-existent meetings

² Although there were no designated "legislative meeting" dates in 2004, and therefore no reimbursements for contributions, the omission was noted at the 2005 retreat and the officers agreed to designate three days, rather than the customary two days, of "legislative meetings" in 2005 to compensate for the 2004 omission. *Id.* at 7.

1 because it was an "unwritten practice" and he believed that "there should be clear policies to
2 ensure that Executive Board members were fairly reimbursed for legitimate expenses that they
3 actually incurred on the PFFW's behalf." *Id.* Although Woodzicka ended the practice of
4 scheduling fictitious legislative meetings in 2008, PFFW did not take any corrective action or
5 consider self-reporting the improper reimbursements for more than a year.

6 **B. Corrective Actions**

7 In January 2010, Joseph Conway, an IAFF Vice-President, advised PFFW that he had
8 learned of PFFW's improper reimbursements of FIREPAC contributions, and he asked what
9 corrective actions PFFW would take. Submission at 16. In March 2010, PFFW consulted with
10 counsel and established a "Special Committee" to review the expense payment practices and
11 recommend a course of action. *Id.* After the Special Committee concluded its review, PFFW
12 sent letters on April 10, 2010, to each of the eleven past and current Executive Board officers
13 itemizing the amounts known to have been reimbursed between 2004 and 2008, inviting any
14 corrections, asking for estimates of reimbursements between 2002 and 2003, and requesting
15 repayment of all contribution reimbursements.³ *Id.* at 9; *see also* Submission Attachments. All
16 eleven Executive Board officers repaid at least the specific sums requested, and some paid
17 additional amounts to reflect 2002 and 2003 contribution reimbursements.⁴ *Id.*

³ PFFW is unable to provide the exact reimbursement figures for 2002 and 2003 because in 2009, it shredded its pre-2005 financial records, including the expense statements submitted by PFFW officers. *Id.* at 8. While PFFW has the electronic Quickbook files for those years, they only record payments and not explanations of the purposes of payments to officers or others. *Id.* PFFW asserts that it shredded documents on the advice of its accountant, the shredding had nothing to do with the expense payment practice, and it happened before the internal review. *Id.*

⁴ PFFW initially requested repayments from officers totaling \$14,193 but received a total of \$18,263.44 in repayments from these individuals. The increase represents the reimbursement amounts totaling \$2,497.42 from individual Executive Board officers who had their own documentation or notations of reimbursements during 2002 and 2003 plus \$1,375 from individual Executive Board officers who used other means to cause PFFW to reimburse FIREPAC contributions made in 2009-2010.

C. Summary

PFFW's payments to reimburse Executive Board officers for FIREPAC contributions are summarized below.

Executive Board Officers	Estimated Officer Reimbursement Amt. for 2002 and 2003	Officer Reimbursement Amt. for 2005-2008	Officer Reimbursement Amt. for 2009-2010	Total amt. repaid by Officers for 2002-2010
Aldrich	\$0	\$1,027.70	n/a	\$1,027.70
Drury	\$837.71	\$2,162.29	\$0	\$3,000
Gee	\$443.66	\$1,956.34	\$475	\$2,875
Hanson	\$131.11	\$2,068.89	\$475	\$2,675
Orlando	n/a	\$678.45	n/a	\$678.45
Woodzicka	\$56.53	\$1,100	\$0	\$1,156.53
TOTALS	\$2,497.42	\$14,391.02	\$1,375	\$18,263.34

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("Act") prohibits a labor organization from making a contribution in connection with any election and any officer of any labor organization from consenting to any contribution by the labor organization. 2 U.S.C. § 441b(a) and 11 C.F.R. 114.2(e). The Act further provides that "no person shall make a contribution in the name of another person." 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(i). The prohibition extends to knowingly permitting one's name to be used to effect the making of contribution in the name of another or knowingly helping or assisting any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(ii) and (iii). The Commission's Explanation and Justification ("E&J") states that "knowingly helping or assisting" applies to "those who initiate or instigate or have some significant participation in a plan or scheme to

1 make a contribution in the name of another” E&J for 11 C.F.R. § 110.4 at 54 Fed. Reg.
2 34,105 (Aug. 17, 1989).

3 The Act also addresses violations of law that are knowing and willful. *See* 2 U.S.C.
4 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is
5 violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*,
6 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established “by
7 proof that the defendant acted deliberately and with knowledge that the representation was
8 false.” *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to
9 show that the defendant had a specific knowledge of the regulations; an inference of knowing
10 and willful conduct may be drawn from the defendant’s scheme to disguise the source of funds
11 used in illegal activities. *Id.* at 213-15.

12 **A. PFFW & Executive Board Officers/Conduits**

13 The expense reimbursement scheme that PFFW began in 2002 designated two days per
14 year for “legislative meetings” that never took place and allowed the Executive Board officers to
15 be reimbursed for their FIREPAC contributions by claiming expenses incurred in connection
16 with these fictional meetings. Submission at 6-7. Between 2002 and 2008, PFFW disbursed
17 \$16,888.34 to reimburse FIREPAC contributions. *Id.* at 3. In addition, between 2009 and 2010,
18 PFFW disbursed \$1,375 to reimburse FIREPAC contributions. *Id.* at 10-12.

19 The individual respondents were officers of PFFW who consented to the use of
20 prohibited labor union treasury funds to reimburse FIREPAC contributions, allowed their names
21 to be used to make these contributions, and knowingly helped or assisted in the making of
22 contributions in the names of others. While the Commission frequently takes no action as to

1 subordinate conduits responding to pressure from their employer/superior, the Commission has
2 pursued officers who consented to and assisted in the use of corporate or union funds to make
3 reimbursements.⁵ See MUR 5357 (Centex) (the Commission approved reason to believe
4 findings against the corporation and the officers for making and consenting to the use of
5 prohibited funds to make contributions in the names of others).

6 Accordingly, the Commission found reason to believe that Patrick Kilbane violated
7 2 U.S.C. §§ 441b(a), 441f, and 11 C.F.R. §§ 110.4(b)(ii) and (iii) and 114.2(e) by consenting to
8 the use of prohibited labor union treasury funds to make contributions in the names of others, by
9 permitting his/her name to be used to make contributions in the name of another, and by
10 knowingly helping or assisting the PFFW in the making of contributions in the names of others.

11 **B. Knowing and Willful**

12 **1. 2002 through 2008 Reimbursement Scheme**

13 The individual Executive Board officers concealed the 2002-2008 reimbursements by
14 authorizing the officers to claim expenses for fictitious "legislative meetings." The individual
15 officers claim there was no pre-planning or discussion about whether such practices would
16 comply with the Act or IAFF policy. But, the Executive Board went to considerable lengths to
17 conceal the reimbursements over a number of years by allowing its officers to be reimbursed for
18 expense vouchers they knew were false. PFFW acknowledges that the Executive Board had the
19 option of revising its existing policies to provide for legitimate reimbursement for the officers'
20 time and efforts. Submission at 7. Instead, it chose a false method to reimburse itself for the

⁵ There is no information that these officers were coerced into agreeing to this scheme. In fact, it appears that there were some Executive Board officers who never participated in the reimbursement scheme. The Submission states that at different times between 2002 and 2008, there were four additional Executive Board officers who did not seek reimbursement payments under the expense payment practice. Submission at 16. However, the Submission does not identify these individuals and is silent as to whether they consented to the use of the union's treasury funds to make contributions in the name of another. *Id.* Given the circumstances, including the impending statute of limitations, the Commission declined to take any action as to these four unnamed Executive Board officers.

1 FIREPAC contributions. Thus, even if Respondents were not aware of the Act's specific
2 prohibitions, Respondents' use of fictitious "legislative meetings" to conceal the reimbursements
3 strongly suggests they knew that the reimbursements were improper. *United States v. Hopkins*,
4 916 F.2d 207, 214 (5th Cir. 1990).

5 Accordingly, the Commission found that Patrick Kilbane's violations of 2 U.S.C.
6 §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(ii) - (iii) and 114.2(e) from 2002 to 2008 were
7 knowing and willful.